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WOODBURN VILLAGE

Condominium Unit Owners Association

3380 Woodburn Road
Annandale, Virginia 22003
(703) 698-1050

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April 10, 1996

Office of the Secretary
c/o Rosalee Chiara
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Proposed regulation - §25.104(f)

Ladies and Gentlemen:

On behalf of the Board of Directors (the "Board") of Woodburn Village Condominium Unit Owners Association (the "Association")¹, I want to thank the Federal Communications Commission for the opportunity to comment on a regulation that is being proposed for implementation at 47 CFR §25.104(f) and published at 61 Fed. Reg. 10710 (March 15, 1996). At the Board's regular monthly meeting on April 3, 1996, I was asked to comment on the proposed regulation on behalf of the Board.

In particular, and for the following reasons, it is requested that the regulation being proposed under §207 of the Telecommunications Act of 1996 (the "statute") be withdrawn, reconsidered and repropose. It is the writer's belief that the proposed regulation is contrary to (1) the Administrative Procedure Act as amended, (2) the Congressional intent in enacting §207 of the statute, and (3) the Code of Virginia.

Section 207 of the statute contains the following:

....[to] promulgate regulations to prohibit restrictions that impair a viewer's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel distribution service, or direct broadcast satellite services.

Based on that provision, your office has issued the following proposed regulation:

No restrictive covenant, encumbrance, homeowners' association rule, or other nongovernmental restriction shall be enforceable to the extent that it impairs a viewer's ability to receive video program services over a satellite antenna less than one meter in diameter.

Both the summary and the summary of notice of proposed rulemaking state that "[t]he proposed rule closely tracks the language of section 207, as amplified by the House Committee Report." While the proposed regulation specifically refers to homeowners' associations, the use of that term and the phrase that follows it in the proposed regulation appear to include condominium associations. Therefore, the practical effect of this proposed regulation on the Association, if it is finalized,

¹The Association consists of 606 units in 43 buildings located in Annandale, Virginia.

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would be to permit 606 unit owners to place satellite antennae on all parts of the 43 buildings (or one part of one of the 43 buildings) of the Association.


For purposes of the Administrative Procedure Act's notice and comments requirements, the term legislative rule has a substantive effect while an interpretative rule typically involves construction or clarification of a law or regulation. As a result, courts must reject administrative constructions of a statutory provision whether reached by adjudication or rulemaking, when interpretation of the statutory provision by the agency charged with its administration is contrary to Congressional intent.²

The report of the House of Representatives³ in describing §308 of the Communications Act of 1995 (the "Act") as it passed the House, contains a somewhat similar provision to the proposed rule. However, while the legislative history of the statute shows that the Senate conferees deferred to the House conferees with respect to many aspects of the statute, this was not the case with respect to §207 of the statute.⁴ Although the historical evolution of a law -- based on decisions by the entire Congress -- should not be discounted because they may undermine confidence in excerpts from congressional debates and committee reports, a historical analysis normally provides less guidance to a law's meaning than the final text.⁵ Therefore, legislative history is a frail substitute for a bicameral vote on the text of a law and its presentment to the President.⁶

Section 55-79.80A of the Code of Virginia provides that except to the extent prohibited by the condominium instruments and subject to any restrictions and limitations specified therein, a unit owners' association shall have the power to grant or withhold approval of any action by one or more unit owners or other persons entitled to occupancy of any unit which would change the exterior appearance of any unit or any portion of the condominium.

Pursuant to the statutory provision, the Supreme Court of Virginia has held that a condominium restriction or limitation reasonably related to a legitimate purpose does not inherently violate a fundamental right and may be enforced if it serves a legitimate purpose and is reasonably applied.⁷ The proposed rule would reverse this decision (at least on a prospective basis) and may be construed as obviating the regulatory authority and the police power of the state. Accordingly, it is respectfully requested that the proposed rule be withdrawn, reconsidered and repropose to, at a minimum, specifically exclude a condominium.

Respectfully submitted,


Michael A. Rubin
Treasurer, Board of Directors

Enclosures (5)

²FEC v. Democratic Senatorial Campaign Comm., 454 U.S. 27, 31-32 (1981)

³H.R. Rep. No. 104-204, 104th Cong. 1st Sess. 124 (1995)

⁴H.R. Rep. No. 104-458, 104th Cong. 2d Sess. 166 (1996)

⁵Hubbard v. U.S., ___ U.S. ___, 115 S.Ct. 1754, 1759 (1995)

⁶Thompson v. Thompson, 484 U.S. 174, 191-192 (1988)

⁷Unit Owners Association of Buildamerica-1 v. Gillman, 223 Va. 752, 292 S.E.2d 378 (1982)